IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 513 OF 2007

Balkrishna Vithal Rai ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. S.P. Thorat, Advocate for the applicant.
Mr. Mr.U.V. Nikam, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 27TH FEBRUARY, 2007.

P.C.

. Heard Mr. Thorat, learned Counsel for the applicant and Mr. Nikam, learned APP for the State. The applicant seeks to be released on bail in Crime No. 8/2007 registered by Saswad Police Station for the offence punishable under sections 328, 420, 471 r/w section 34 of Indian Penal Code and under section 65 (K) (D) of the Bombay Prohibition Act, 1949.

2. The prosecution case, in brief, is that on getting information that accused Nos. 1 to 5 named in the FIR were selling illicit liquor, police party raided the spot and arrested all those 5 accused persons on the spot with illicit liquor and the material used for the

purpose of distillation of the illicit liquor. Spirit was being used for making liquor. They also found some bottles having labels of foreign liquor. In those bottles illicit liquor with spirit was being filled in and there was also facility for sealing the bottles. All the material was seized and the offence came to be registered against those 5 persons. Later on it was revealed that the present applicant, who is hotelier, used to take liquor bottles from accused Nos. 1 to 5 and sell the same at his hotel. Such liquor bottles were found in his possession. Therefore, the present applicant was added accused No.6 in the matter. The application filed by the present applicant came to be rejected by the Court below mainly on the ground that there is a serious charge under section 328 IPC because there was allegation that the accused used to prepare country liquor by using spirit and other intoxicant articles which are dangerous to the health of the public at large. It was also observed that the present applicant, who is accused No.6, used to deal in such liquor prepared by the other accused and he is more dangerous because he actually serves the illicit liquor to the public at large. In these circumstances, the original accused No.6 has come to this Court seeking

bail.

3. If the facts alleged in the FIR are taken as the face value at the most the offence punishable under section 65, 66, 67 and 67(1) (A) Bombay Prohibition Act appear to have been committed. Section 65 says whoever imports or exports or manufactures any intoxicant, constructs or works any distillery or brewery, bottles liquor, sells or purchase intoxicant or use or keeps any intoxicant or has in possession any materials, still utensils, implements or apparatus for the purpose of manufacturing any intoxicant, the offence is punishable with imprisonment for a term which may extend to three years and also with fine. Section 66(1) mainly deal with punishments for consumption, use, possession, transport of any intoxicant and the offence is punishable for imprisonment for a term which may extend to six months with fine, in case of first offence and for second or third offence with imprisonment which may extend to two years with fine. Section 67 provides that whoever in contravention of section 21 alters or attempts to alters any denatured spirit or has in his possession any spirit in respect of which he knows or has reason to believe that any such alternation or

attempt has been made shall on conviction, be punished with imprisonment for a term which may extend to one year and with fine. There is a presumption in this section that, unless the contrary is proved, the alteration or attempt to alter any denatured of spirit was done with intention that such spirit may be used for human consumption as intoxicating liquor. Section 67-1A provides that whoever in contravention of section 21A alters or attempts to alter any denatured spirituous preparation or has in his possession any such preparation in respect of which he knows or has reason to believe that any such alteration or attempt has been made shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine.

4. As per the prosecution case accused Nos. 1 to 5 were in possession of denatured spirt and it was altered or was being altered into intoxicant which could be used for human consumption and as far as present applicant is concerned he was not manufacturer, nor he himself had made any alteration. Therefore case against him could fall under section 66 and under Section 671A of Bombay Prohibition Act. If it is his first offence under section 66 the punishment is only six months

imprisonment and fine which may extend to Rs. 1000/- and for the offence under section 67-1A he may be punished with imprisonment which may extend to one year and with fine which may extend to Rs. 1000/-. Both the offences are bailable.

5. In the present case, prosecution has invoked section 328 of Indian Penal code which reads as follows:-

> "*Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*"

On careful reading of this section, it is clear that a person, who administers or causes to be taken by any person any poison or any stupeying, intoxicating or unwholesome drug, or other thing with intention to cause hurt to such person or with intention to commit or to facilitate commission of offence or knowing it to be likely that he will thereby cause hurt, may be punished

with imprisonment which may extent to ten years. The basic ingredients of section 328 are to administer or cause it to be administered some poison or some such drug and second is the intention to cause hurt to such person. In the F.I.R. In the police papers not a word is uttered which would disclose that the present applicant had administered or had caused to be administered any poison or such substance to any person and that too with intention to cause hurt to such person. According to the prosecution case, the accused was keeping illicit liquor which was prepared by altering denatured spirit by some other accused, for the purpose of sale in his hotel. Neither he personally administered such intoxicant, nor the intention could be to cause hurt to his customers. There is no allegation that anybody had consumed such liquor or intoxicant at the hotel of accused or after purchasing from the hotel of the accused. Taking into consideration this fact, prima facie it appears that section 328 I.P.C. may not be applicable.

6. In view of the facts and circumstances noted above, the applicant is hereby granted bail in the sum of Rs. 5000/- with surety in like amount with condition

that he shall not tamper with prosecution evidence.

(J.H. BHATIA, J.)